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No. 01-1506

Supreme Court U.S.
FILED

JUN 12 2002

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In The
Supreme Court of the United States

TRAVIS RIPPY, by next friend Aaron and Janet Rippy, AARON RIPPY, and JANET RIPPY,

Petitioners,

v.

GEORGE HATTAWAY, individually and in his official capacity as Commissioner, Tennessee Department of Children's Services, ANNE MARIE BRYANT, individually and in her official capacity as social counselor of the Tennessee Department of Children's Services, and SHIRLEY BARTLETT, individually and in her official capacity as field supervisor of the Tennessee Department of Children's Services,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

DID THE COURT OF APPEALS CORRECTLY GRANT TO SOCIAL WORKERS ABSOLUTE QUASI-JUDICIAL IMMUNITY FOR THEIR ACTIONS OR OMISSIONS IN FORMULATING RECOMMENDATIONS TO A JUVENILE COURT IN ITS DECISIONS WHETHER TO RETURN A CHILD IN CUSTODY TO THE CHILD'S PARENTS AND WHICH ELEMENTS SHOULD BE INCLUDED IN A PLAN OF CARE FOR THE FAMILY?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT	4
CONCLUSION	5

TABLE OF AUTHORITIES

Page

CASES

Achterhof v. Selvaggio, 886 F.2d 826 (6th Cir. 1989).....12

Brokaw v. Mercer County, 235 F.3d 1000 (7th Cir. 2000)..... 8

Buckley v. Fitzsimmons, 509 U.S. 259 (1993).....6, 11

Burns v. Reed, 500 U.S. 478 (1991) 6

Ernst v. Child & Youth Services of Chester County, 108 F.3d 486 (3d Cir. 1997) 8, 11, 12, 13, 14

Gobel v. Maricopa County, 867 F.2d 1201 (9th Cir. 1989).....11

Gray v. Poole, 275 F.3d 1113 (D.C. Cir. 2002)..... 9

Hili v. Sciarrotta, 140 F.3d 210 (2d Cir. 1998) 10

Hill v. City of New York, 45 F.3d 653 (2d Cir. 1995)..... 7

Hodorowski v. Ray, 844 F.2d 1210 (5th Cir. 1988) 8

Holloway v. Brush, 220 F.3d 767 (6th Cir. 2000).....8, 12, 13, 14

Holloway v. Ohio, 179 F.3d 431 (6th Cir. 1999).....12

Imbler v. Pachtman, 424 U.S. 409 (1976).....5, 6

Kurzawa v. Mueller, 732 F.2d 1456 (6th Cir. 1984) 12

Maynard v. Havenstrite, 727 F.2d 439 (5th Cir. 1984).....10

Miller v. City of Philadelphia, 174 F.3d 368 (3d Cir. 1999)..... 8

Rippy v. Hattaway, 270 F.3d 416 (6th Cir. 2001).....3, 4, 10, 14

TABLE OF AUTHORITIES – Continued

Page

Snell v. Tunnell, 920 F.2d 673 (10th Cir. 1990) 9, 11

Tripati v. INS, 784 F.2d 345 (10th Cir. 1986) 10

Vosburg v. Department of Soc. Servs., 884 F.2d 133 (4th Cir. 1989) 8

Whisman v. Rinehart, 119 F.3d 1303 (8th Cir. 1997) 9

Wilkinson v. Russell, 182 F.3d 89 (2d Cir. 1998) 7

STATUTES

Tenn. Code Ann. § 37-1-130(e)(1) 5

Tenn. Code Ann. § 37-2-403(a)(2)(A) 5

42 U.S.C. § 1983 ..... 2, 5

OTHER AUTHORITIES

Fed. R. Civ. P. 12(b)(6) 2

STATEMENT OF THE CASE

The petitioners in this case are Aaron and Janet Rippy and their minor son, Travis Rippy. On May 23, 1995, and without a hearing, the Juvenile Court of Robertson County, Tennessee, issued an order placing Travis in the custody of the Tennessee Department of Children's Services (DCS) pursuant to a petition for temporary custody filed by DCS social worker Anne Marie Bryant. In the petition, Bryant erroneously alleged that Aaron and Janet Rippy had been indicted for sexually abusing Travis' older brother, Brandon. She also alleged that the Rippys' parental rights to Brandon had been terminated and that the Rippys had refused to give DCS an address to find Brandon.

On May 25, 1995, the Juvenile Court held a hearing in the Rippys' absence, but did not then issue another order. Bryant and her supervisor, Shirley Bartlett, did not ensure that Travis was represented by a guardian ad litem or that the Rippys were aware of their right to counsel under Tennessee law. Travis remained in the Rippys' custody in Kentucky, where no one from DCS observed, interviewed or examined him, until February 9, 1996, when DCS took him into custody. Travis bore no signs of abuse or neglect when he entered custody on February 9, 1996.

On February 15, 1996, without further hearing, the Juvenile Court issued an order of disposition finding Travis dependent and neglected on the basis of the original petition and awarding custody of Travis to DCS.

In May 1996, social workers documented the absence of signs of sexual abuse. Kentucky's state agency for child protection approved the Rippys' home as safe for Travis,

but Bryant and Bartlett refused to return Travis to the Rippys.

Bryant prepared plans of care pursuant to Tennessee law that required the Rippys to attend sexual perpetrator classes that in turn required the Rippys to admit that they were sexual perpetrators, despite the absence of evidence that Travis had been sexually abused or that the Rippys had been indicted and convicted of sexual crimes. The Rippys refused to attend the classes, and Bryant and Bartlett refused to return Travis to the Rippys' custody.

On August 22, 1997, the Fourth Circuit Court for Davidson County, Tennessee, issued a writ of habeas corpus requiring DCS to return Travis to the Rippys.

Petitioners filed a 42 U.S.C. § 1983 lawsuit in the United States District Court for the Middle District of Tennessee alleging due process violations and pendent state law claims. Respondents filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss the complaint, claiming absolute and qualified immunity. The District Court held that Respondents were entitled to absolute immunity for filing the initial custody petition and for the execution of the initial custody order but otherwise held that Respondents were not entitled to absolute or qualified immunity for what it characterized as administrative or investigative acts. Respondents appealed to the United States Court of Appeals for the Sixth Circuit.

In its opinion, filed on November 2, 2001, the Court of Appeals found that Petitioners alleged that Respondents omitted to take four acts. Specifically, Petitioners alleged that Bryant and Bartlett: (1) failed to ensure appointment of a guardian ad litem for Travis in the May 1995 hearing; (2) failed to inform the Rippys of their right to counsel at

the same hearing; (3) failed to observe, interview or examine Travis between the May 1995 hearing and his February 1996 entry into state custody; and (4) failed to return Travis to the Rippys until August 1997 despite lack of evidence of risk of harm. *Rippy v. Hattaway*, 270 F.3d 416, 422 (6th Cir. 2001). Petitioners do not appear to dispute the Court of Appeals' grant of absolute immunity as to the first two allegations.

As to the third and fourth allegations, the Court of Appeals observed that Petitioners implied that Respondents could have effected Travis' return if they had conducted an adequate investigation at any time after the Juvenile Court ordered Travis removed in May 1995. However, Tennessee law vested in the Juvenile Court alone the authority to return Travis and assigned Respondents only an advisory role in the Juvenile Court's decision. Citing cases from other circuits, the Court of Appeals analogized Respondents' advisory role to the advisory role played by probation officers, who also have absolute immunity for their sentencing recommendations to criminal courts, and granted absolute immunity to Respondents for their adjunct advisory role to the Juvenile Court. *Id.* at 422-23.

The Court of Appeals noted that Petitioners also contended that Respondents were not entitled to absolute immunity for devising and implementing a plan of care that required the Rippys to admit that they were sexual perpetrators. Again, however, under Tennessee law the Juvenile Court was charged with approving the plan of care, and again Respondents functioned as an arm of the Juvenile Court when they devised and submitted elements of the plan for the Juvenile Court's approval. Accordingly, the Court of Appeals found that Respondents were entitled

to absolute immunity for their quasi-judicial role in devising the plan of care, including their inclusion in the plan submitted to the Juvenile Court of a requirement that the Rippys attend a class for sexual perpetrators. *Id.* at 423.

Petitioners filed a petition for rehearing *en banc* on November 16, 2001, which the Court of Appeals denied in an order filed on January 8, 2002.

ARGUMENT

The opinion below stands for the unremarkable proposition that social workers who function as integral parts of the judicial process are entitled to absolute immunity for such functions, regardless of how those functions are labeled. Petitioners alleged in their complaint only that Respondents[1] omitted to take actions that Tennessee law ultimately entrusts to Tennessee's juvenile courts, not to social workers such as Respondents. Contrary to Petitioners' assertions, the opinion is consistent with the general rule in the Sixth Circuit and other circuits that social workers and other officials enjoy absolute immunity for actions intimately related to the judicial process, but only qualified immunity for other administrative or investigative actions.

[1] Because the Petitioners dispute only the absolute immunity granted to respondent social workers Anne Marie Bryant and Shirley Bartlett, and not the qualified immunity granted to respondent Commissioner Hattaway, the term "Respondents" will refer only to the social workers.

The Court's decision in the instant case is simply an application of the generally accepted principles of absolute immunity. The alleged omissions by Respondents were functions intimately related to the Juvenile Court, namely, formulating recommendations to the Juvenile Court to inform its decisions as to whether to return Travis to the Rippys and recommending elements to be included in the plan of care. As the Court of Appeals noted, Tennessee law entrusts to the Juvenile Court, not to DCS workers, the decision whether to return a child in custody to his parents. Tenn. Code Ann. § 37-1-130(e)(1) (providing that before DCS may return a child home, it must notify the Juvenile Court that it intends to do so, and that the Juvenile Court may set a hearing on the matter). Tennessee law also entrusts to the Juvenile Court the final review and approval of plans of care for custodial children and any requirements contained therein. Tenn. Code Ann. § 37-2-403(a)(2)(A) (providing that DCS should prepare for Juvenile Court review and approval a reunification plan of care that includes parental responsibilities). Social workers make recommendations to the Juvenile Court regarding both the return of the child and requirements of the plan of care. Tenn. Code Ann. §§ 37-1-130(e)(1) and 37-2-403(a)(2)(A). As the Court of Appeals correctly found, those recommendations are intimately related to Tennessee's judicial process, entitling social workers who make those recommendations to absolute immunity for their actions or omissions.

Contrary to Petitioners' assertions, the Court of Appeals' decision in this case is consistent with the prevailing view of absolute prosecutorial or quasi-judicial immunity in cases against state officials under 42 U.S.C. § 1983, and with its own prior decisions. In *Imbler v.*

Pachtman, 424 U.S. 409, 424-31 (1976), this Court extended absolute quasi-judicial immunity to a prosecutor based on a functional analysis of whether the prosecutor's activities were "intimately associated with the judicial phase of the criminal process." *Id.* at 430. In *Burns v. Reed*, 500 U.S. 478, 492-96 (1991), this Court declined to extend absolute immunity to a prosecutor for giving legal advice to police because giving legal advice is not associated closely enough to the judicial process. The Court noted that a key factor supporting the grant of absolute immunity – the check on abuse provided by the judicial process and court oversight – is absent when a prosecutor gives pretrial advice to police, particularly when a suspect is not later prosecuted. *Id.* at 496. In *Buckley v. Fitzsimmons*, the Court clarified its holding in *Burns*, writing:

> A prosecutor's administrative duties and **those investigatory functions that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity**. . . . We have not retreated, however, from the principle that acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. Those acts must include the professional evaluation of evidence assembled by the police and appropriate preparation for its presentation at trial or before a grand jury after a decision to seek indictment has been made.

509 U.S. 259, 273 (1993) (emphasis added). The emphasized language clarifies that labeling a function as "investigatory"

does not automatically mean that it is entitled to only qualified immunity. Those "investigatory functions" that relate to judicial proceedings are entitled to absolute immunity regardless of the label.

Following this Court's lead, the circuits have adopted a functional approach to determine the level of immunity accorded social workers. Social workers are entitled to absolute immunity when they perform functions related to the judicial process, but only qualified immunity when they perform administrative or investigative functions that are not related to the judicial process. The cases cited by Petitioners do not stand for the overly simplistic position that "absolute immunity is not available to social workers except when they are serving as advocates in a court proceeding or when drafting a petition to remove a child from his or her parents' custody." (Petition at 5.) Rather, the Courts of Appeals have engaged in a more nuanced and fact-driven inquiry into the relationship of a worker's actions to the judicial process. None of the decisions cited by Petitioners denied absolute immunity to social workers for functions of devising and presenting recommendations for court review in decisions ultimately entrusted to the court. *See, e.g., Wilkinson v. Russell*, 182 F.3d 89, 98 (2d Cir. 1998) (denying absolute immunity to a Vermont social worker for communicating with a Connecticut social worker whom a Connecticut court had ordered to ask the Vermont agency "what's going on," because the Vermont social worker was not under the order or engaged in communication with the Connecticut court); *Hill v. City of New York*, 45 F.3d 653, 660-62 (2d Cir. 1995) (denying absolute immunity for acts performed before the initiation of a criminal child abuse proceeding, including removal of a child and direction to police to

arrest a parent, but granting absolute immunity for acts performed subsequently, including malicious prosecution, conspiring to present false evidence, and suppressing *Brady* material); *Miller v. City of Philadelphia*, 174 F.3d 368, 376 n.6 (3d Cir. 1999) (denying absolute immunity to a social worker for investigative actions and communications to an agency attorney prior to the judicial phase, at which point the attorney, not the social worker, communicated evidence to the court; but recognizing, citing *Ernst v. Child & Youth Services of Chester County*, 108 F.3d 486, 494 (3d Cir. 1997), that social workers enjoy absolute immunity for formulating and presenting recommendations to the court in the course of proceedings); *Vosburg v. Department of Soc. Servs.*, 884 F.2d 133, 137-38 (4th Cir. 1989) (granting absolute immunity to social workers for filing a removal petition, because the petition is "in essence, the start of judicial proceedings . . . and the duties of a social worker at that point are those of an advocate in that process," but indicating in dicta that actions prior to the initiation of judicial proceedings are entitled to only qualified immunity); *Hodorowski v. Ray*, 844 F.2d 1210, 1215-16 (5th Cir. 1988) (denying absolute immunity for social workers who unilaterally removed a child when they "never obtained a court order authorizing the removal" *Id.* at 1212); *Holloway v. Brush*, 220 F.3d 767, 774-77 (6th Cir. 2000) (denying absolute immunity to a social worker who falsely told a previously unlocated and absent mother that her parental rights had been terminated and withheld from the court knowledge of the mother's appearance); *Brokaw v. Mercer County*, 235 F.3d 1000, 1014 n.10 (7th Cir. 2000) (writing in dicta that a social worker was not entitled to absolute immunity for gathering evidence and initiating removal when the social worker, acting with grandparents and the grandparents' relative and friends on a police force,

removed children without a court order); *Whisman v. Rinehart*, 119 F.3d 1303, 1308-09 (8th Cir. 1997) (denying social workers absolute immunity when they took custody of a child absent a court order and subsequently avoided or delayed filing court proceedings); *Snell v. Tunnell*, 920 F.2d 673, 686-96 (10th Cir. 1990) (denying absolute immunity to a social worker for filing an application for a pre-adjudicatory order that was functionally similar to an arrest warrant sought by a police officer, particularly when agency policy required the social worker to report findings of abuse or neglect to other authorities whose responsibility it was to undertake further investigation or advocacy in the form of initiation of court proceedings); *Gray v. Poole*, 275 F.3d 1113, 1116-19 (D.C. Cir. 2002) (denying absolute immunity for social worker's actions as investigator and adviser to city attorney as analogous to the role a police officer plays in assembling evidence for a prosecutor, but granting absolute immunity for social worker's actions in making and signing a statement in the removal petition because she then acted as a witness in a judicial proceeding).

Three key factors seem to guide the decisions just cited: whether a social worker's actions occurred before or after the initiation of judicial proceedings, whether a social worker's relationship with the court was direct or through an intermediary, and whether a social worker's actions prevented or delayed a parent's access to the judicial system. Social workers were denied absolute immunity when their actions occurred before the initiation of judicial proceedings, when their responsibilities, actions or communications vis-a-vis the court were indirect, and when they delayed or prevented court proceedings. Conversely, as is true in this case, social workers were accorded absolute immunity when their actions occurred after the

initiation of judicial proceedings, in connection with duties directly owed the court, and without any allegation that the workers deliberately denied or delayed judicial proceedings.

Moreover, the Court of Appeals decision does not, as Petitioners claim, "put[ ] it nearly alone among the circuit courts on the issue as to whether social workers enjoy absolute immunity for their investigatory and administrative actions." (Petition at 4.) First, the Court of Appeals did not extend blanket immunity to social workers for administrative and investigative actions, but only for such actions as might be characterized as intimately related to the judicial process, namely, only those specific actions that Petitioners complained about. *Rippy*, 270 F.3d at 422-23 (holding that the function of making recommendations to the Juvenile Court as to whether it should return a child home, including the underlying investigation, is intimately related to the judicial process, and that the function of acting as an arm of the court in devising a plan of care for the court's review and approval were both entitled to absolute immunity).

Second, the Court of Appeals was consistent with other circuits in granting absolute immunity to social workers for investigative actions that social workers took as part of their statutory duty to formulate and make recommendations to Juvenile Court as to the return home of children, analogizing such investigative actions to those taken by probation officers when they prepare presentencing reports to criminal courts. 270 F.3d at 422-23 (citing *Hili v. Sciarotta*, 140 F.3d 210, 213 (2d Cir. 1998); *Tripati v. INS*, 784 F.2d 345, 348 (10th Cir. 1986); *Maynard v. Havenstrite*, 727 F.2d 439, 441 (5th Cir. 1984)). When the issue has been addressed, the circuits have in fact

recognized, as has this Court, that some "investigatory functions" might "relate to an advocate's preparation for . . . judicial proceedings," *Buckley*, 509 U.S. at 273, and that child welfare officials are absolutely immune from suit in performing those functions. Thus, the Tenth Circuit accorded absolute immunity to an attorney for a state child welfare agency for her investigation incident to filing an application for a removal order. *Snell v. Tunnell*, 920 F.2d 673, 692-94 (10th Cir. 1990). The court cautioned that "the rule concerning absolute immunity for prosecutorial functions and not for investigative or administrative functions is easier to state than apply." *Id.* at 693. The court held that "actions undertaken as part of the preparation of a prosecutor's [child welfare] case are absolutely immune, even if such actions could be characterized as 'investigative' or 'administrative.'" *Id.* (citing *Gobel v. Maricopa County*, 867 F.2d 1201, 1204 (9th Cir. 1989)). The court denied absolute immunity to social workers who investigated the case before judicial proceedings were initiated and who gave an attorney false information to put before the court. *Snell*, 920 F.2d at 691-92. Still, the court recognized that social workers in other cases could be absolutely immune for actions in preparing reports to a court analogous to probation officers' presentencing reports. *Id.* at 692 n.18. Similarly, the Third Circuit accorded absolute immunity to social workers "preparing for, initiating and prosecuting dependency proceedings," adding that their "immunity is broad enough to include the formulation and presentation of recommendations to the court in the course of such proceedings." *Ernst v. Child & Youth Servs. of Chester County*, 108 F.3d 486, 495 (3d Cir. 1997). In so holding, the court wrote, "we join the courts of appeals of the Fourth, Sixth, Seventh, Eighth, and Ninth Circuits." *Id.*

As the *Ernst* court noted, the Sixth Circuit, like the other cited circuits, has adopted a functional approach to deciding whether officials' actions are entitled to absolute immunity. *Achterhof v. Selvaggio*, 886 F.2d 826, 829-31(6th Cir. 1989); *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984). In *Kurzawa*, the court held that when social workers perform a prosecutorial function, in that case the prosecution of child neglect and dependency petitions, social workers are entitled to absolute immunity. 732 F.2d at 1458. In *Achterhof*, the court declined to extend absolute immunity to social workers for an investigative or administrative function unrelated to the judicial process, in that case the decision to open an investigation into a child abuse case, and limited social workers to qualified immunity for such a function. 886 F.2d at 829-31.

Kurzawa and *Achterhof* established that when social workers function as "integral parts of the judicial process," *Kurzawa,* 732 F.2d at 1458, they are entitled to absolute quasi-prosecutorial immunity, but did not elaborate the range of immunized functions beyond the filing of court petitions.

The Sixth Circuit explored the issue of absolute immunity further in *Holloway v. Brush*, 220 F.3d 767 (6th Cir. 2000) ("*Holloway II*"), in which, sitting *en banc*, the court reversed its earlier decision in *Holloway v. Ohio*, 179 F.3d 431 (6th Cir. 1999) ("*Holloway I*"). In the *Holloway* cases, a social worker falsely informed a mother whose husband had absconded with her children that her parental rights had been terminated, when in fact the termination proceeding was still pending. *Holloway II*, 220 F.3d at 771. Further, the social worker later withheld from the trial court knowledge of the "long-sought appearance of the children's mother." *Id.* In *Holloway I*, the court

analogized the social workers' actions to those of a prosecutor controlling a witness' testimony and granted the social worker absolute immunity. However, in *Holloway II*, the court reversed itself, noting that the mother was not the social worker's witness, but a party, and that the social worker had not withheld evidence, but administrative facts about the case and its posture from both the mother and the trial court. 220 F.3d at 776. The court wrote that the social worker's out-of-court actions were not those of an advocate and were inconsistent with her statutory role. *Id.* at 777. Nor were they "analogous to recommendations made by caseworkers to the court, or the 'formulation of professional judgments that served as the basis for' such recommendations." *Id.* (quoting *Ernst*, 108 F.3d 486, 498). Rather than recommendations to the court, the social workers' actions were usurpations of the court's authority. *Holloway II*, 220 F.3d at 777.

Petitioners' reliance on *Holloway II* is misplaced. *Holloway II* did not hold, as Petitioners contend, that "the preparation of a child's 'case plan' is not protected by absolute immunity," (Petition at 8), but instead that a social worker's failure to follow her extra-judicial role in Ohio's statutory scheme regarding case plans was not entitled to absolute immunity. The court observed that Ohio statutes charged the Ohio child welfare agency to prepare and maintain a case plan, and, in doing so, to attempt to obtain agreement among the parties, including the parent. 220 F.3d at 775. The court held that instead of following the statutes' mandate to obtain an agreement with the parent, the social worker described herself to the parent as an "adversary" and refused to obtain the parent's participation in the proceedings and agreement to the plan. *Id.* at 775-76. The court recognized that if the

social worker had followed the statute, it was possible that her position could later have been adversarial to the parent, but added that even then the advocate for the Ohio agency would have been county prosecutors, not the social worker. *Id.* at 776. More importantly, and foreshadowing its decision in this case, the court distinguished the social workers' actions from "recommendations made by case-workers to the court" or "the 'formulation of professional judgment that served as the basis for' such recommendations, which the Third Circuit has held are entitled to immunity." *Id.* at 777 (quoting *Ernst, supra*). Finally, it should be noted that even the dissenting judge in the present case, who authored *Holloway II*, found no analytical inconsistency between *Rippy* and *Holloway II*, but instead based his dissent only upon his view that the complaint could be read to allege that Respondents had purposefully or maliciously interfered with or prevented a hearing, 270 F.3d at 425 (Boggs, J., dissenting), a view that the lead opinion rejected because Petitioners failed to make such allegations. *Id.* at 423 n.2.

Despite Petitioners' attempts to manufacture disharmony, the Court of Appeals' decision in this case falls squarely within the circuits' absolute immunity jurisprudence regarding social workers and is a logical extension of the Sixth Circuit's rulings that typify the other circuits' jurisprudence. The court extended absolute immunity for social workers for actions intimately related to Tennessee's judicial process, namely, those that took place after the initiation of judicial proceedings and in connection with their statutorily-mandated duties to formulate and provide recommendations to the Juvenile Court. The social workers functioned as arms of or advisers to the Juvenile Court, absolutely immune from lawsuit. In sum, the

decision below does not present any important issue of federal law as to which the lower courts are in conflict and, accordingly, does not warrant further review by this Court.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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